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LB

13 UNITED STATES DISTRICT COURT  
14  
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 RICHARD WUEST, individual and on behalf of )  
17 a class of similarly situated individuals, )  
18 Plaintiffs, )  
19 v. )  
20 CLEARWIRE CORPORATION; CLEARWIRE )  
21 COMMUNICATIONS LLC; CLEAR )  
22 WIRELESS LLC; and DOES 1 through 10, )  
inclusive, )  
Defendants. )

C 12 5061  
Case No.  
CLEARWIRE'S NOTICE OF REMOVAL  
OF CLASS ACTION COMPLAINT  
(Removed from San Francisco County  
Superior Court, Case No. CGC-12-522668)  
State Action Filed: July 25 2012

DAVIS WRIGHT TREMAINE LLP

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
 2 NORTHERN DISTRICT OF CALIFORNIA:

3 **PLEASE TAKE NOTICE** that under the Class Action Fairness Act of 2005 (“CAFA”),  
 4 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendants Clearwire Corporation, Clearwire  
 5 Communications LLC, and Clear Wireless LLC (collectively, “Clearwire”) remove this action  
 6 from the Superior Court of the State of California for the County of San Francisco, Civil Case No.  
 7 CGC-12-522668, to the United States District Court for the Northern District of California. In  
 8 support of this Notice of Removal, Clearwire states as follows:

9 **INTRODUCTION**

10 1. On July 25, 2012, Plaintiff Richard Wuest filed a complaint against Clearwire in  
 11 the Superior Court of the State of California for the County of San Francisco, Case No. CGC-12-  
 12 522668, captioned “*Richard Wuest, individual [sic] and on behalf of a class of similarly situated*  
 13 *individuals v. Clearwire Corporation; Clearwire Communications LL; Clear Wireless LLC; and*  
 14 *DOES 1 through 10, inclusive.*”

15 2. On August 30, 2012, Mr. Wuest served Clearwire with the Summons and  
 16 Complaint.

17 3. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because  
 18 Clearwire filed it within thirty days after completion of service.

19 4. Pursuant to 28 U.S.C. § 1446(a), Clearwire attaches as **Exhibit A** a true and correct  
 20 “copy of all process, pleadings, and orders served upon [Clearwire]” in the state court action,  
 21 together with copies of all additional records in the state court file as of September 25, 2012.

22 5. Although Mr. Wuest has also named as defendants DOES 1 through 10, Clearwire  
 23 does not need the consent of those defendants to remove this action. 28 U.S.C. §§ 1441(a), (b), &  
 24 1453(b); *Westwood Apex v. Contreras*, 644 F.3d 799, 806 (9th Cir. 2011).

25 **FEDERAL JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT**

26 6. This action is removable to this Court because federal diversity jurisdiction under  
 27 28 U.S.C. § 1332 exists over Mr. Wuest’s claims under CAFA, 28 U.S.C. §§ 1332(d) & 1453.

1       7.     Congress enacted CAFA to enlarge federal jurisdiction over proposed class actions.  
 2 CAFA provides that a class action against a non-governmental entity may be removed to federal  
 3 court if: (1) the proposed class consists of 100 or more members; (2) the aggregate amount in  
 4 controversy exceeds \$5 million, exclusive of interest and costs; and (3) any member of the  
 5 proposed plaintiff class is a citizen of a different state than any defendant. *See* 28 U.S.C. §§  
 6 1332(d)(2), (d)(5), (d)(6), & 1453(b). As shown below, this action satisfies all these requirements:

7                   **Mr. Wuest Proposes a Class of More than 100 Persons**

8       8.     Mr. Wuest brings this case as a proposed class action, Compl. ¶¶ 1, 29–41, and  
 9 seeks to certify a class under California Code of Civil Procedure § 382, Compl. ¶ 29. This action  
 10 is therefore a proposed “class action” under 28 U.S.C. § 1332(d)(1)(B), which defines “class  
 11 action” as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar  
 12 State statute or rule of judicial procedure authorizing an action to be brought by 1 or more  
 13 representative persons as a class action.”

14       9.     Mr. Wuest asserts a claim for violation of the California Invasion of Privacy Act,  
 15 Penal Code §§ 630 *et seq.* (the “Privacy Act”), Compl. ¶¶ 2, 42–47, on behalf of the following  
 16 proposed class:

17                   All California residents who, at any time during the applicable limitations  
 18 period preceding the filing of this Complaint through the date of resolution,  
 19 participated in one or more telephone conversations with a Clear call center  
 20 from a cellular or cordless telephone located in California and whose calls  
 21 with one or more of the call centers were recorded by Defendants  
 22 surreptitiously or without disclosure.

23                   *Id.* ¶ 29.

24       10.    Mr. Wuest alleges Clearwire has a “policy and practice of recording calls to and  
 25 from Clear call centers without the consent of all parties,” including calls placed to “telephone  
 26 numbers 888-888-3133, 877-355-9793, 877-558-8283 and 877-917-4768.” *Id.* ¶ 1; *see also* ¶ 2  
 27 (“policy and practice of recording telephone conversations”); ¶ 17 (“practice and policy of  
 28 recording those calls made to Clear call centers”); ¶ 18 (“Clear call centers are trained to, and  
 instructed to, and did, record telephone calls between Clear and callers, including California

1 callers"); ¶¶ 44–46 (similar allegations). Mr. Wuest claims this alleged policy and practice of  
2 recording calls without disclosure and consent violates the Privacy Act. *Id.* ¶¶ 2–3.

3 11. Although Clearwire denies liability, its business records show it received at the  
4 888-888-3133 telephone number more than 10,000 phone calls from California customers with  
5 California area codes during the statutory limitations period for Mr. Wuest's claims, i.e., the one-  
6 year period from July 25, 2011, to July 25, 2012. *See Declaration of Joseph Sollner ("Sollner*  
7 *Decl.") ¶ 2; Montalti v. Catanzariti*, 191 Cal. App. 3d 96, 98, 236 Cal. Rptr. 231 (1987) (one-year  
8 limitations period applies to Privacy Act claim for statutory penalties). Mr. Wuest claims  
9 Clearwire, as a matter of "policy and practice," recorded these calls. *See Compl. ¶¶ 1-3, 15-18,*  
10 27, 44-46. Further, by June 2010, over eighteen percent of California residents lived in  
11 households that used only wireless telephones. *See Nat'l Health Statistics Report, Wireless*  
12 *Substitution: State-level Estimates From the Nat'l Health Interview Survey, January 2007 – June*  
13 *2010*, (Apr. 20, 2011), at p. 7, available at <http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf>.

14 12. Although Clearwire contests the propriety of class certification, for purposes of  
15 removal, Mr. Wuest’s allegations and the number of calls from California customers with  
16 California area codes (more than 10,000) to just one of the telephone numbers (888-888-3133) at  
17 issue show the proposed class exceeds 100 members. 28 U.S.C. § 1332(d)(5)(B); *Morey v. Louis*  
18 *Vuitton N. Am., Inc.*, 461 Fed. App’x 642, 644 (9th Cir. 2011) (CAFA’s class-size requirement  
19 met where defendant processed “substantially in excess of 5,000 credit card transactions” during  
20 the class period, a number that reasonably implies at least 100 separate credit card users”);  
21 *Tompkins v. Basic Research LL*, 2008 WL 1808316, at \*3 (E.D. Cal. Apr. 22, 2008) (CAFA’s  
22 class-size requirement met where complaint alleged class of “thousands of persons,” “implying a  
23 logical minimum of 2,000 class members”).

### **The Amount in Controversy Exceeds \$5,000,000**

25 13. For purposes of removal under CAFA, “the claims of the individual class members  
26 shall be aggregated to determine whether the amount in controversy exceeds the sum or value of  
27 \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6). Based on Mr. Wuest’s

1 allegations, this is an “action in which the matter in controversy exceeds the sum or value of  
 2 \$5,000,000.” *Id.* § 1332(d)(2).

3       14.     In determining whether the removing party has met the amount-in-controversy, the  
 4 Court looks first to the complaint. *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 399 (9th Cir.  
 5 2010). In the event of an effort to remand, “when the complaint does not contain any specific  
 6 amount of damages sought, the party seeking removal under diversity bears the burden of  
 7 showing, by a preponderance of the evidence, that the amount in controversy exceeds the statutory  
 8 amount.” *Id.* at 397 (citing *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir.  
 9 2007)). In conjunction with any motion to remand, courts may consider “summary-judgment-type  
 10 evidence relevant to the amount in controversy at the time of removal.” *Abrego Abrego v. The  
 11 Dow Chem. Co.*, 443 F.3d 676, 690 (9th Cir. 2006) (citation omitted). Courts may also consider  
 12 supplemental evidence later offered by the removing party and not included in the original  
 13 removal notice. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 n.1 (9th Cir. 2002).

14       15.     Clearwire denies Mr. Wuest’s allegations of Clearwire’s liability and will oppose  
 15 certification of the putative class. For purposes of establishing the jurisdictional predicates for  
 16 removal, however, Mr. Wuest’s allegations and the number of calls from California customers  
 17 with California area codes to one of the telephone numbers at issue establish that the amount in  
 18 controversy exceeds \$5,000,000. *See Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199,  
 19 1205-06 (E.D. Cal. 2008) (“The ultimate inquiry is what amount is put ‘in controversy’ by the  
 20 plaintiff’s complaint, not what a defendant will *actually* owe.”).

21       16.     “Where a statutory maximum is specified, courts may consider the maximum  
 22 statutory penalty available in determining whether the jurisdictional amount in controversy  
 23 requirement is met.” *Korn*, 536 F. Supp. 2d at 1205. The Privacy Act provides a private right of  
 24 action for violations of the Act and permits recovery of \$5,000 or three times the amount of actual  
 25 damages, whichever is greater. Cal. Penal Code § 637.2(a). Mr. Wuest seeks to recover “statutory  
 26 damages of \$5,000 under Penal Code § 637.2 for every violation of Penal Code § 632.7” and  
 27 claims “Plaintiff and the Class members ... are entitled to \$5,000 in statutory damages per  
 28 violation.” Compl. ¶¶ 36(e) & 47. Mr. Wuest further seeks an award of “attorneys’ fees under

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1 California Code of Civil Procedure § 1021.5.” *Id.*, Prayer for Relief ¶ f; *see Chabner v. United of*  
 2 *Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th Cir. 2000) (court should include amount of  
 3 attorney’s fees plaintiffs claim, aggregated on a class-wide basis, in determining whether amount-  
 4 in-controversy requirement met). Thus, according to Mr. Wuest’s theory of recovery under the  
 5 Privacy Act, CAFA’s \$5 million amount in controversy requirement would be met if the proposed  
 6 class contains 1,001 people, each potentially entitled to recover the \$5,000 statutory penalty.

7 17. Mr. Wuest seeks to recover the \$5,000 statutory penalty and attorneys’ fees on  
 8 behalf of a class consisting of “[a]ll California residents who ... participated in one or more  
 9 telephone conversations with a Clear call center from a cellular or cordless telephone located in  
 10 California and whose calls with one or more of the call centers were recorded by Defendants  
 11 surreptitiously or without disclosure.” Compl. ¶ 29. And Mr. Wuest alleges Clearwire has a  
 12 “policy and practice” of recording all calls to all its call centers, including all California calls  
 13 placed to 888-888-3133. *See id.* ¶¶ 1–3, 15–18, 27, 44–46.

14 18. Although Clearwire denies liability, its business records show it received at the  
 15 888-888-3133 telephone number more than 10,000 telephone calls from California customers with  
 16 California area codes during the statutory limitations period for Mr. Wuest’s claims, July 25,  
 17 2011, to July 25, 2012. *See* Sollner Decl. ¶ 2; *Montalti*, 191 Cal. App. 3d at 98 (one-year  
 18 limitations period applies to Privacy Act claim for statutory penalties). Because a conservative  
 19 estimate of the percentage of those calls coming from callers with cellular or cordless phones  
 20 equals 18%, as explained above, this case therefore puts “in controversy” more than 1,800 calls  
 21 from California callers to Clearwire. *See Korn*, 536 F. Supp. 2d at 1205–06 (the question under  
 22 CAFA is the amount “put ‘in controversy’ by the plaintiff’s complaint”). Based on Mr. Wuest’s  
 23 allegations and the number of California calls to only one of the telephone numbers at issue, the  
 24 amount in controversy substantially exceeds \$5 million (1,800 times \$5,000 statutory damages per  
 25 violation equals \$9,000,000). *See id.*; *Morey*, 461 Fed. App’x at 644 (“Because the amount in  
 26 controversy could be as much as \$1,000 for each subsequent violation, and it is undisputed that  
 27 there were ‘substantially in excess’ of 5,000 credit card transactions, the preponderance of the  
 28 evidence shows that the amount in controversy exceeds \$5 million.”); *see also Lewis*, 627 F.3d at

1 400 (defendant not required to admit liability to remove under CAFA); *Grant v. Capital Mgmt.*  
 2 *Serv., L.P.*, 449 Fed. App'x 598, 600 (9th Cir. 2011) (same); *Lippold v. Godiva Chocolatier, Inc.*,  
 3 2010 U.S. Dist. LEXIS 47144, at \*8 (N.D. Cal. Apr. 15, 2010) (“a removing defendant is not  
 4 obligated to research, state, and prove the plaintiff’s claims for damages”) (citation omitted).

5 19. “The amount in controversy is simply an estimate of the total amount in dispute,  
 6 not a prospective assessment of defendant’s liability.” *Lewis*, 627 F.3d at 400. Clearwire denies it  
 7 violated the Privacy Act. But even if Mr. Wuest could prove a violation, Mr. Wuest has suffered  
 8 no injury in fact and has no basis for recovery. These issues, however, are not before the Court for  
 9 resolution at this time. For removal purposes only, Clearwire acknowledges the alleged amount in  
 10 controversy exceeds \$5 million.

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**Diversity Exists**

12 20. Under 28 U.S.C. § 1332(d)(2)(A), a district court may assert jurisdiction over a  
 13 class action in which “any member of a class of plaintiffs is a citizen of a State different from any  
 14 defendant.”

15 21. “[A] corporation shall be deemed to be a citizen of every State and foreign state by  
 16 which it has been incorporated and of the State or foreign state where it has its principal place of  
 17 business.” *Id.* § 1332(c)(1). Federal courts apply the “nerve center” test to determine a  
 18 corporation’s principal place of business. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1186, 1192  
 19 (2010). The company’s officers or members “direct, control, and coordinate” the company’s  
 20 activities from the “nerve center.” *Id.* at 1192. The “nerve center” will “normally be the place  
 21 where the [company] maintains its headquarters—provided that the headquarters is the actual  
 22 center of direction, control, and coordination.” *Id.*

23 22. Defendants Clearwire Corporation and Clearwire Communications LLC are each  
 24 incorporated in Delaware and headquartered in Washington State. Compl. ¶¶ 5–6. Defendant  
 25 Clear Wireless LLC is incorporated in Nevada, but like the other defendant entities, is  
 26 headquartered and has its principal place of business in Washington. *Id.* ¶ 7. For diversity  
 27 purposes, therefore, the Clearwire defendants are citizens of Delaware, Nevada, and Washington.  
 28 28 U.S.C. § 1332(c)(1); *Hertz*, 130 S. Ct. at 1192. Mr. Wuest, by contrast, alleges he is “a

1 California resident.” Compl. ¶ 4. Further, the Complaint seeks certification of a class consisting  
2 solely of “California residents.” Compl. ¶ 29.

3        23.      Because the parties are diverse, this case satisfies the diversity requirements of 28  
4 U.S.C. § 1332(d)(2)(A).

### **The Exceptions to Jurisdiction Do Not Apply**

6       24.     The exceptions to jurisdiction set forth in 28 U.S.C. § 1332(d)(3) and (4) do not  
7 apply because Clearwire is not a citizen of the State in which Mr. Wuest originally filed this  
8 action. 28 U.S.C. §§ 1332(d)(3), 1332(d)(4)(A)(i)(II)(cc), 1332(d)(4)(B).

## **Clearwire Has Satisfied the Remaining Procedural Requirements for Removal**

10       25.     The Court has original jurisdiction over this action under 28 U.S.C. § 1332(d).  
11 Clearwire may remove this action to this Court under 28 U.S.C. §§ 1441, 1446, and 1453.  
12 Because Mr. Wuest filed the state court action in the Superior Court for the County of San  
13 Francisco, Clearwire has properly removed the state court action to the Northern District of  
14 California, and venue in the San Francisco Division or Oakland Division would be appropriate  
15 under 28 U.S.C. §§ 84(a), 1391, and 1446(a), and Civil L.R. 3-2(d).

16       26. Clearwire will promptly give written notice of the filing of the original Notice of  
17 Removal to Mr. Wuest, and file a copy of the Notice of Removal with the Clerk of the Superior  
18 Court for the County of San Francisco, pursuant to 28 U.S.C. § 1446(d).

20 WHEREFORE, Clearwire requests that the above-described civil action be removed from  
21 the Superior Court of the State of California for the County of San Francisco to the United States  
22 District Court for the Northern District of California.

23 Dated: September 28, 2012.

Respectfully Submitted,

DAVIS WRIGHT TREMAINE LLP

By: J. R. Sh

Thomas R. Burke

*Attorneys for Defendants*

## **EXHIBIT A**

**Superior Court of California, County of San Francisco**

Case Number: CGC-12-522668

Title: RICHARD WUEST VS. CLEARWIRE CORPORATION et al

Cause of Action: BUSINESS TORT

Generated: Sep-25-2012 3:09 pm PST

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**Register of Actions**

Date Range: First Date Jul-25-2012

Last Date Sep-25-2012 (Dates must be entered as MMM-DD-YYYY)

Descending Date Sequence

ALL FILING TYPES

Date	Proceedings	Document	Fee
SEP-19-2012	SUMMONS ON COMPLAINT FILED BY PLAINTIFF WUEST, RICHARD INDIVIDUALLY ON BEHALF OF A CLASS OF SIMILARLY SITUATED INDIVIDUALS SERVED SEP-14-2012, PERSONAL SERVICE ON DEFENDANT CLEARWIRE COMMUNICATIONS LLC	<a href="#">View</a>	
SEP-19-2012	SUMMONS ON COMPLAINT FILED BY PLAINTIFF WUEST, RICHARD INDIVIDUALLY ON BEHALF OF A CLASS OF SIMILARLY SITUATED INDIVIDUALS SERVED SEP-14-2012, PERSONAL SERVICE ON DEFENDANT CLEARWIRE CORPORATION	<a href="#">View</a>	
AUG-31-2012	SUMMONS ON COMPLAINT FILED BY PLAINTIFF WUEST, RICHARD INDIVIDUALLY ON BEHALF OF A CLASS OF SIMILARLY SITUATED INDIVIDUALS SERVED AUG-30-2012, PERSONAL SERVICE ON DEFENDANT CLEAR WIRELESS LLC	<a href="#">View</a>	
JUL-25-2012	JURY FEES DEPOSITED BY PLAINTIFF WUEST, RICHARD INDIVIDUALLY ON BEHALF OF A CLASS OF SIMILARLY SITUATED INDIVIDUALS		150.00
JUL-25-2012	NOTICE TO PLAINTIFF	<a href="#">View</a>	
JUL-25-2012	BUSINESS TORT, COMPLAINT FILED BY PLAINTIFF WUEST, RICHARD INDIVIDUALLY ON BEHALF OF A CLASS OF SIMILARLY SITUATED INDIVIDUALS AS TO DEFENDANT CLEARWIRE CORPORATION CLEARWIRE COMMUNICATIONS LLC CLEAR WIRELESS LLC DOES 1 THRU 10, INCL. SUMMONS ISSUED, JUDICIAL COUNCIL CIVIL CASE COVER SHEET FILED CASE MANAGEMENT CONFERENCE SCHEDULED FOR DEC-26-2012 PROOF OF SERVICE DUE ON SEP-24-2012 CASE MANAGEMENT STATEMENT DUE ON DEC-11-2012	<a href="#">View</a>	450.00



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

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Jul-25-2012 9:42 am

Case Number: CGC-12-522668

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COMPLAINT

RICHARD WUEST VS. CLEARWIRE CORPORATION et al

001C03698876

**Instructions:**

Please place this sheet on top of the document to be scanned.

**SUMMONS**  
**(CITACION JUDICIAL)**

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

CLEARWIRE CORPORATION; CLEARWIRE COMMUNICATIONS LLC; CLEAR WIRELESS LLC; and DOES 1 through 10, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

RICHARD WUEST, individual and on behalf of a class of similarly situated individuals,

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

*AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

San Francisco County Superior Court  
400 McAllister Street, Room 103, San Francisco, CA 94102

CASE NUMBER  
(Número del Caso):

CGC-12-522668

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Eric A. Grover (SBN 136080), KELLER GROVER LLP, 1965 Market St., San Francisco, CA (415)543-1305  
CLERK OF THE COURT

DATE:  
(Fecha)

JUL 25 2012

Clerk, by  
(Secretario)Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

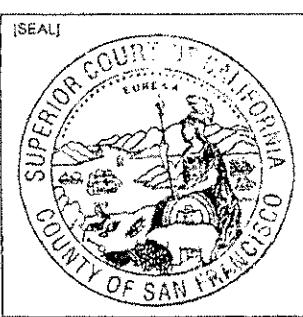
**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify):

under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):

4.  by personal delivery on (date):



**BY FAX**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Eric A. Grover (SBN 136080) KELLER GROVER LLP 1965 Market Street San Francisco, CA 94103 TELEPHONE NO.: (415)543-1305 FAX NO.: (415)543-7861		CM-010 FOR COURT USE ONLY
ATTORNEY FOR (Name): Plaintiff RICHARD WUEST		<b>FILED</b> Superior Court of California County of San Francisco JUL 25 2012 CLERK OF THE COURT BY: <i>Eric R.</i> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street, Room 103		
MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102		
BRANCH NAME: Civil Division		
CASE NAME: <b>WUEST v. CLEARWIRE CORPORATION, et al.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded exceeds \$25,000)      (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	<b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	<b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20)
<b>Non-PI/PD/WD (Other) Tort</b> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	<b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	<b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
<b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties
- b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c.  Substantial amount of documentary evidence
- d.  Large number of witnesses
- e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f.  Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary   b.  nonmonetary; declaratory or injunctive relief   c.  punitive

4. Number of causes of action (specify): 2

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 24, 2012

Eric A. Grover

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

BY FAX

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

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18 ATTORNEYS FOR PLAINTIFF  
19 RICHARD WUEST

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF SAN FRANCISCO**

16 RICHARD WUEST, individual and on behalf ) Case No.: **CGC-12-522668**  
17 of a class of similarly situated individuals, )  
18 Plaintiff, )  
19 v. )  
20 CLEARWIRE CORPORATION; )  
21 CLEARWIRE COMMUNICATIONS LLC; )  
22 CLEAR WIRELESS LLC; and DOES 1 )  
through 10, inclusive, )  
23 Defendants. )  
24

**BY FAX**

## CLASS ACTION COMPLAINT

Plaintiff Richard Wuest ("Plaintiff" or "Wuest"), on behalf of himself and a class (the "Class") of similarly situated individuals as defined below, alleges on information and belief and the investigation by counsel as follows:

## INTRODUCTION

6       1.     This class action lawsuit arises out of Defendants' policy and practice of recording calls  
7 made to and from Clear call centers without the consent of all parties. The telephone numbers 888-  
8 888-3113, 877-355-9793, 877-558-8283 and 877-917-4768, among numerous other numbers, connect  
9 callers with call centers for Clear, a wireless internet services provider and a division of Clearwire  
10 Corporation and its operating subsidiaries Clearwire Communications LLC and Clear Wireless LLC.  
11 Defendants then intentionally and surreptitiously record telephone calls made to Clear call centers  
12 without warning or disclosing to callers that they are doing so.

14       2. Defendants' policy and practice of recording telephone conversations without the  
15       consent of all parties violates California's Invasion of Privacy Act (Penal Code §§ 630, *et seq.*).  
16       Specifically, Defendants' policy and practice violate Penal Code § 632.7, which prohibits the  
17       recording of a communication made from a cellular or cordless telephone without the consent of all  
18       parties to the communication.

19       3.     As a result of Defendants' violations, all individuals who called Clear call centers,  
20 including callers who used the telephone numbers 877-355-9793, 888-888-3113, 877-558-8283 and/or  
21 877-917-4768, and were recorded by Defendants surreptitiously and without disclosure are entitled to  
22 an award of statutory damages and injunctive relief as set forth in Penal Code § 637.2.

## PARTIES

4. Plaintiff Richard Wuest is an individual and a California resident.

25       5.     Defendant Clearwire Corporation is a Delaware corporation headquartered in Kirkland,  
26 Washington. Clearwire Corporation regularly does business throughout the United States. On  
27 information and belief, Clearwire Corporation is not registered with the California Secretary of State

and therefore has not provided the Secretary of State with a principal place of business within the state of California. Clearwire Corporation systematically and continuously does business in California and with California residents.

6. Clearwire Communications LLC is a subsidiary of Clearwire Corporation and a Limited Liability Company organized under the laws of the State of Delaware with a principal place of business in Kirkland, Washington. Clearwire Communications LLC is not registered with the California Secretary of State and therefore has not provided the Secretary of State with a principal place of business within the state of California. Clearwire Communications LLC systematically and continuously does business in California and with California residents.

7. Clear Wireless LLC is a subsidiary of Clearwire Corporation and a Limited Liability Company organized under the laws of the State of Nevada with a principal place of business in Kirkland, Washington. Clear Wireless LLC systematically and continuously does business in California and with California residents. On information and belief Clear Wireless LLC has not identified a principal place of business within California on its most recent Statement of Information filed with the California Secretary of State.

8. "Clear" means and refers to Defendants Clearwire Corporation, Clearwire Communications LLC, and Clear Wireless LLC, collectively.

9. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 10, inclusive, and therefore sues those defendants by those fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and on that ground alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences alleged and that Plaintiff's injuries and damages, as alleged, are proximately caused by those occurrences.

10. "Defendants" means and refers to Defendants Clearwire Corporation, Clearwire Communications LLC, Clear Wireless LLC, and the fictitiously named defendants, each and all of them.

11. Plaintiff is informed and believes and on that ground alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and on that ground alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that each knew or should have known about and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all Defendants.

## **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction over this action under California Penal Code §§ 632.7 and 637.2.

13. This Court has personal jurisdiction over the parties because Defendants Clearwire Corporation, Clearwire Communications LLC, and Clear Wireless LLC continually and systematically have conducted business in the State of California. Likewise, Plaintiff's rights were violated in the State of California and arose out of his contact with Defendants from California.

14. Venue is proper in this Court because Code of Civil Procedure §§ 395 and 395.5 and case law interpreting those sections provide that if a foreign business entity fails to designate with the office of the California Secretary of State a principal place of business in California, it is subject to being sued in any county that a plaintiff desires. On information and belief, Defendants Clearwire Corporation, Clearwire Communications LLC, and Clear Wireless LLC are foreign business entities and each has failed to designate a principal place of business in the state of California with the office of the Secretary of State as of the date this Complaint was filed.

#### **FACTUAL ALLEGATIONS COMMON TO THE CLASS**

15. Plaintiff is informed and believes and on that ground alleges that the telephone numbers 888-888-3113, 877-355-9793, 877-558-8283, and 877-917-4768 connect callers with call centers

1 providing sales and support services for Clear ("Clear call centers"). On information and belief, the  
2 Clear call centers are owned and operated by Defendants.

3 16. Plaintiff is informed and believes and on that ground alleges that Defendants'  
4 employees and agents at Clear call centers receive incoming calls from callers including California  
5 callers.

6 17. Plaintiff is informed and believes and on that ground alleges that Defendants  
7 intentionally have used technology consisting of hardware and/or software to carry out a practice and  
8 policy of recording those calls made to Clear call centers.

9 18. Plaintiff is informed and believes and on that ground alleges that Defendants'  
10 employees and agents at Clear call centers are trained, and instructed to, and did, record telephone  
11 calls between Clear and callers, including California callers.

12 19. In November, 2011, Plaintiff called Clear from his home in California using a cordless telephone  
13 Plaintiff called Clear to discuss the possible provision of wireless internet service to  
14 Plaintiff by Clear. Plaintiff decided not to sign up for Clear's services at that time.

16 20. On December 11, 2011, Plaintiff called Defendants from his home cordless telephone  
17 in California to order Clear wireless internet equipment and service for his father. During the phone  
18 call with Defendants, Plaintiff shared personal and financial information with Defendants, including  
19 his name, address, and credit card information.

20 21. On December 11, 2011, less than one hour after placing his order for Clear wireless  
21 equipment and services, Plaintiff again called Defendants from his home cordless telephone in  
22 California to cancel his order. The cancellation was accepted by Defendants.

23 22. On December 18, 2011 Plaintiff called Defendants from his home cordless telephone  
24 in California. Plaintiff called to inform Defendants that despite his cancellation of his order, his credit  
25 card had still been charged for Clear's services and he still received wireless internet equipment from  
26 Defendants. Defendants' employee or agent stated that Plaintiff would be sent a return shipping label  
27 in the mail and that Plaintiff would be refunded upon returning Defendants' equipment.

1       23. On December 30, 2011 Plaintiff called Defendants four times from California using his  
2 cell phone. On at least two of these telephone calls Plaintiff spoke with Defendants agents and/or  
3 employees. Plaintiff called to inform Defendants that he still had not received a return shipping label  
4 from Defendants to return Clear's equipment so that his refund could be processed.

5       24. On February 23, 2012, Plaintiff called Defendants six more times from California using  
6 his cell phone and one more time using his cordless home telephone. On one such occasion, Plaintiff's  
7 call was disconnected before he spoke with Defendants' agents and/or employees. Plaintiff called to  
8 inform Defendants that his credit card had again been charged for Clear's service, despite the fact that  
9 he had returned Clear's equipment and that he wanted a refund.

10       25. On February 24, 2012, Plaintiff called Defendants again from California using his cell  
11 phone. Plaintiff called because his credit card still had not been refunded for the unauthorized charges  
12 for Clear's services.

13       26. On February 27, 2012, Plaintiff called Defendants one more time from his home in  
14 California using his cordless telephone regarding the status of his refund for unauthorized charges  
15 made to his credit card.

16       27. During Plaintiff's telephone calls to Defendants, Defendants failed to disclose to  
17 Plaintiff, without being asked, that his telephone conversations with Defendants were being recorded.  
18 Plaintiff did not give and could not have given consent for the telephone calls to be recorded because  
19 he was unaware that Defendants were engaged in that practice during the telephone calls. In February,  
20 2012, during several of his telephone calls with Defendants, Plaintiff asked, without being informed at  
21 the outset of the calls by Defendants, whether his telephone calls were being recorded. In each  
22 instance Defendants stated that Plaintiff's calls were being recorded. Plaintiff is informed and believes  
23 and on that ground alleges that callers who called one or more Clears call centers, including those who  
24 called Clear by dialing 888-888-3113, 877-355-9793, 877-558-8283, and/or 877-917-4768, were not  
25 informed by Defendants or anyone else that their calls were being recorded. Thus, that recording  
26 necessarily occurred without the callers' knowledge or consent.

1       28. Because there was no warning that calls would be recorded, Plaintiff had a reasonable  
2 expectation that his telephone conversations with Defendants' employees and agents were, and would  
3 remain, private and confined to the parties on the telephone. That recording without his consent is  
4 highly offensive to Plaintiff and would be highly offensive to a reasonable person, including members  
5 of the proposed Plaintiff Class.

## **CLASS ACTION ALLEGATIONS**

29. Plaintiff brings this action under California Code of Civil Procedure § 382 on behalf of himself and the class (the "Class") defined as follows:

All California residents who, at any time during the applicable limitations period preceding the filing of this Complaint through the date of resolution, participated in one or more telephone conversations with a Clear call center from a cellular or cordless telephone located in California and whose calls with one or more of the call centers were recorded by Defendants surreptitiously or without disclosure.

30. The Class Plaintiff seeks to represent contains numerous members and is clearly ascertainable including, without limitation, by using the Defendants' records and/or Defendants' telephone company's or other toll-free service provider's records regarding calls to telephone numbers for Clear call centers to determine the size of the Class and to determine the identities of individual Class members. Plaintiff reserves the right under Rule 3.765 of the California Rules of Court to amend or modify the Class definitions or to add subclasses or limitations to particular issues.

31. By their unlawful actions, Defendants have violated Plaintiff's and the Class's privacy rights under California's Invasion of Privacy Act, California Penal Code §§ 630 *et seq.* The questions raised are, therefore, of common or general interest to the Class members, who have a well-defined community of interest in the questions of law and fact raised in this action.

32. Plaintiff's claims are typical of those of the Class, as Plaintiff now suffers from the same violations of the law as other putative Class members. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions to represent him and the Class, and Plaintiff will fairly and adequately represent the interests of the Class.

1       33. This action may properly be maintained as a class action under Code of Civil Procedure  
2 § 382 because there is a well-defined community of interest in the litigation and the proposed Class is  
3 ascertainable.

4 **Numerosity**

5       34. Based on information and belief, the Class consists of at least seventy-five individuals,  
6 making joinder of individual cases impracticable.

7 **Typicality**

8       35. Plaintiff's claims are typical of the claims of all of the other members of the Class.  
9 Plaintiff's claims and the Class members' claims are based on the same legal theories and arise from  
10 the same unlawful conduct, resulting in the same injury to Plaintiff and to all of the other Class  
11 members.

12 **Common Questions of Law and Fact**

13       36. There are questions of law and fact common to the Class that predominate over any  
14 questions affecting only individual Class members. Those common questions of law and fact include,  
15 without limitation, the following:

- 16       a.      Whether Defendants have a policy or practice of recording calls made to the  
17            Clear call center;
- 18       b.      Whether Defendants have a policy or practice of not disclosing to callers whose  
19            calls are recorded that their conversations with the Clear call center would be  
20            recorded;
- 21       c.      Whether Defendants have a policy or practice of not obtaining callers' consent  
22            to record telephone calls made to the Clear call center;
- 23       d.      Whether Defendants violated California Penal Code § 632.7 by recording  
24            telephone conversations between callers and the Clear call center surreptitiously  
25            and without disclosure;

e. Whether Class members are entitled to statutory damages of \$5,000 under Penal Code § 637.2 for every violation of Penal Code § 632.7.

### Adequacy

37. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the other Class members and have the financial resources to do so. Neither Plaintiff nor his counsel have any interests adverse to those of the other Class members.

## Superiority

38. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class members is impracticable and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Even if every individual Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts if individual litigation of the numerous cases were to be required. Individualized litigation also would present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the conduct of this action as a class action with respect to some or all of the issues will present fewer management difficulties, conserve the resources of the court system and the parties and protect the rights of each Class member. Further, it will prevent the very real harm that would be suffered by numerous putative Class members who simply will be unable to enforce individual claims of this size on their own, and by Defendants' competitors, who will be placed at a competitive disadvantage as their reward for obeying the law. Plaintiff anticipates no difficulty in the management of this case as a class action.

39. The prosecution of separate actions by individual Class members may create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of

1 other Class members not parties to those adjudications or that would substantially impair or impede  
2 the ability of those non-party Class members to protect their interests.

3 40. The prosecution of individual actions by Class members would establish inconsistent  
4 standards of conduct for Defendants.

5 41. Defendants have acted or refused to act in respects generally applicable to the Class,  
6 thereby making appropriate final and injunctive relief or corresponding declaratory relief with regard  
7 to members of the Class as a whole as requested herein. Likewise, Defendants' conduct as described  
8 above is unlawful, is capable of repetition, and will continue unless restrained and enjoined by the  
9 Court.

10 **FIRST CAUSE OF ACTION**

11 **Unlawful Recording of Communications against All Defendants**

12 **(Violation of California Penal Code § 632.7)**

13 42. Plaintiff incorporates each allegation set forth above as if fully set forth herein and  
14 further alleges as follows.

15 43. Plaintiff participated in numerous telephone calls that he made from California with  
16 Defendants' employees or agents at one or more Clear call centers and initiated those calls by dialing  
17 the telephone numbers 888-888-3113, 877-355-9793, 877-558-8283 and 877-917-4768. Plaintiff used  
18 a cellular or cordless telephone to engage in each of the conversations.

19 44. Plaintiff is informed and believes and on that ground alleges that, at all relevant times,  
20 Defendants had a policy and practice of using a telephone system that enabled them to surreptitiously  
21 record conversations between Plaintiff and Class members using cellular or cordless telephones and  
22 Clear call centers.

23 45. Plaintiff is informed and believes and on that ground alleges that Defendants had and  
24 followed a policy and practice of intentionally and surreptitiously recording Plaintiff's and Class  
25 members' cellular and cordless telephone conversations with one or more Clear call centers.

26 46. Plaintiff is informed and believes and on that ground alleges that Defendants had and  
27

1 followed a policy and practice of not advising or warning Plaintiff or Class members that their cellular  
 2 and cordless telephone communications with Clear call centers would be recorded. Because  
 3 Defendants did not disclose to Plaintiff or Class members that their calls were being recorded,  
 4 Defendants did not obtain, and could not have obtained, Plaintiff's or Class members' express or  
 5 implied advance consent to the recording of those conversations. As a result, Plaintiff and Class  
 6 members had an objectively reasonable expectation that their calls were not being recorded. That  
 7 expectation and its objective reasonableness arise, in part, from the objective offensiveness of  
 8 surreptitiously recording people's conversations, the absence of even a simple pre-recorded message  
 9 as short as four simple words – "calls may be recorded" – and the ease with which such a message  
 10 could have been put in place. As the California Supreme Court has stated, "in light of the  
 11 circumstance that California consumers are accustomed to being informed at the outset of a telephone  
 12 call whenever a business entity intends to record the call, it appears equally plausible that, in the  
 13 absence of such an advisement, a California consumer reasonably would anticipate that such a  
 14 telephone call is not being recorded, particularly in view of the strong privacy interest most persons  
 15 have with regard to the personal financial information frequently disclosed in such calls." (See  
 16 *Kearney v. Salomon Smith Barney* (2006) 39 Cal. 4th 95.)

17  
 18 47. Defendants' conduct as described above violated California Penal Code § 632.7(a).  
 19 Under Penal Code § 637.2, Plaintiff and Class members therefore are entitled to \$5,000 in statutory  
 20 damages per violation, even in the absence of proof of actual damages, the amount deemed proper by  
 21 the California Legislature. Plaintiff and Class members also are entitled to injunctive relief to enjoin  
 22 further violations.

23     ///

24     ///

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1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff, on behalf of himself and members of the Class, prays for the  
3 following relief:

4 a. An order certifying the Class and appointing Plaintiff Richard Wuest representative of  
5 the Class, and appointing counsel for Plaintiff as lead counsel for the Class;

6 b. An order declaring that the actions of Defendants, as described above, violate  
7 California Penal Code § 632.7;

8 c. A judgment for and award of statutory damages to Plaintiff and the members of the  
9 Class pursuant to California Penal Code § 637.2;

10 d. A permanent injunction under Penal Code § 637.2 enjoining Defendants from engaging  
11 in further conduct in violation of California Penal Code § 630, *et seq.*;

12 e. Payment of costs of the suit;

13 f. Payment of attorneys' fees under California Code of Civil Procedure § 1021.5;

14 g. An award of pre- and post-judgment interest to the extent allowed by law; and

15 h. For such other or further relief as the Court may deem proper.

16  
17 Respectfully submitted,

18 Dated: July 24, 2012

KELLER GROVER LLP

19  
20 By:



21 Eric A. Grover  
22 Attorneys for Plaintiff and the Proposed Class  
23  
24  
25  
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**JURY DEMAND**

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: July 24, 2012

KELLER GROVER LLP

By:

Eric A. Grover  
Attorneys for Plaintiff and the Proposed Class

CASE NUMBER: CGC-12-522668 RICHARD WUEST VS. CLEARWIRE CORPORATION et al

**NOTICE TO PLAINTIFF**

A Case Management Conference is set for:

DATE: DEC-26-2012  
TIME: 2:00PM  
PLACE: Department 610  
400 McAllister Street  
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order without an appearance at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

**ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.  
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

**Document Scanning Lead Sheet**

Aug-31-2012 9:24 am

Case Number: CGC-12-522668

Filing Date: Aug-31-2012 9:24

Filed by: MARYANN E. MORAN

Juke Box: 001 Image: 03746796

**PROOF OF SERVICE OF SUMMONS AND COMPLAINT**

RICHARD WUEST VS. CLEARWIRE CORPORATION et al

001C03746796

**Instructions:**

Please place this sheet on top of the document to be scanned.

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Carey Been, 240996 Keller Grover LLP 1965 Market Street SAN FRANCISCO, CA 94103 TELEPHONE NO.: (415) 543-1305 ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY Superior Court of California County of San Francisco AUG 31 2012 CLERK OF THE COURT BY: May Ann Moran Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, San Francisco County 400 McAllister Street, Civil San Francisco, CA 94102-0000		
PLAINTIFF/PETITIONER: Wuest	CASE NUMBER: CGC-12-522668	
DEFENDANT/RESPONDENT: Clearwire	Ret. No. or File No.: Clearwire	
PROOF OF SERVICE OF SUMMONS		

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Civil Case Cover Sheet, Summons, Complaint for Damages and Injunctive Relief, Notice to Plaintiff, Judicial Mediation Program, [blank] Case Management Statement, ADR Program Information Packet, [blank] Slipulation to ADR.
3. a. Party served: Clear Wireless LLC
- b. Person Served: CSC - Becky DeGeorge - Person authorized to accept service of process
4. Address where the party was served: 2710 N Gateway Oaks Dr Ste 150  
Sacramento, CA 95833
5. I served the party
  - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 8/30/2012 (2) at (time): 1:50 PM
6. The "Notice to the Person Served" (on the summons) was completed as follows:
  - c. on behalf of:

FAX

Clear Wireless LLC

under: Other: Limited Liability Company

## 7. Person who served papers

a. Name: Michelle Dodd  
 b. Address: One Legal - 194-Marin  
 504 Redwood Blvd #223  
 Novato, CA 94947

c. Telephone number: 415-491-0606

d. The fee for service was: \$ 35.95

e I am:

(3) registered California process server.  
 (i) Employee or independent contractor.  
 (ii) Registration No.: 2011-42  
 (iii) County: SACRAMENTO

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.  
 Date: 8/30/2012

Michelle Dodd

(NAME OF PERSON WHO SERVED PAPERS)

(SIGNATURE)

Code of Civil Procedure, § 417.10

Form Approved for Mandatory Use  
 Judicial Council of California POS-010  
 (Rev. Jan 1, 2007)

PROOF OF SERVICE OF SUMMONS

OL# 6788737



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

**Document Scanning Lead Sheet**

Sep-19-2012 2:39 pm

Case Number: CGC-12-522668

Filing Date: Sep-19-2012 2:39

Filed by: WESLEY G. RAMIREZ

Juke Box: 001 Image: 03770429

PROOF OF SERVICE OF SUMMONS AND COMPLAINT

RICHARD WUEST VS. CLEARWIRE CORPORATION et al

001C03770429

**Instructions:**

Please place this sheet on top of the document to be scanned.

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number and address)		FOR COURT USE ONLY
Carey Been, 240996 Keller Grover LLP 1965 Market Street SAN FRANCISCO, CA 94103 TELEPHONE NO.: (415) 543-1305		<b>F I L E D</b> Superior Court of California County of San Francisco SEP 19 2012 <b>CLERK OF THE COURT</b> NY. <i>[Signature]</i> Deputy Clerk
ATTORNEY FOR (Name) Plaintiff SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, San Francisco County 400 McAllister Street, Civil San Francisco, CA 94102-0000		CASE NUMBER
PLAINTIFF/PETITIONER, Wuest DEFENDANT/RESPONDENT, Clearwire Corporation.		CGC-12-522668
<b>PROOF OF SERVICE OF SUMMONS</b>		Ref. No. or File No. Clearwire

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Civil Case Cover Sheet, Summons, Complaint for Damages and Injunctive Relief, Notice to Plaintiff, ADR Packet, [blank] Case Management Statement, Judicial Mediation Program Packet, [blank] ADR Stipulation

BY FAX

3. a. Party served: Clearwire Corporation

5. Person Served: Caroline Little - Corporation Service Company - Person authorized to accept service of process  
4. Address where the party was served: 300 Deschutes Way SW Suite 304  
Tumwater, WA 98501

5. I served the party  
a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) or (date): 9/14/2012 (2) at (time): 1:15 PM  
6. The "Notice to the Person Served" (on the summons) was completed as follows:  
c. on behalf of:

Clearwire Corporation

under. CCP 416.10 (corporation)

7. Person who served papers  
a. Name: C. Heater  
b. Address: One Legal - 194-Marin  
504 Redwood Blvd #223  
Novato, CA 94947  
c. Telephone number: 415-491-0606  
d. The fee for service was: \$ 52.95  
e. I am:  
(1) Not a registered California process server.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

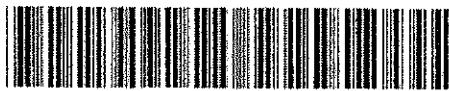
Date: 9/17/2012

C. Heater

*[Signature]*

(Signature)

Code of Civil Procedure § 417.10



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

**Document Scanning Lead Sheet**

Sep-19-2012 2:40 pm

Case Number: CGC-12-522668

Filing Date: Sep-19-2012 2:40

Filed by: WESLEY G. RAMIREZ

Juke Box: 001 Image: 03770431

PROOF OF SERVICE OF SUMMONS AND COMPLAINT

RICHARD WUEST VS. CLEARWIRE CORPORATION et al

001C03770431

**Instructions:**

Please place this sheet on top of the document to be scanned.

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Indicate State Bar number, if applicable)		FOR COURT USE ONLY
Carey Been, 240996 Keller Grover LLP 1965 Market Street SAN FRANCISCO, CA 94103 TELEPHONE NO: (415) 543-1305 ATTORNEY FOR (name) Plaintiff		<b>FILED</b> Superior Court of California County of San Francisco SEP 19 2012 CLERK OF THE COURT BY: <i>[Signature]</i> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, San Francisco County 400 McAllister Street, Civil San Francisco, CA 94102-0000		CASE NUMBER CGC-12-522668
PLAINTIFF/PETITIONER Woesl  DEFENDANT/RESPONDENT: Clearwire Corporation,		Ref No. or Fax No Clearwire
<b>PROOF OF SERVICE OF SUMMONS</b>		

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action.
2. I served copies of: Civil Case Cover Sheet, Summons, Complaint for Damages and Injunctive Relief, Notice to Plaintiff, ADR Packet, [blank] Case Management Statement, Judicial Mediation Program Packet, [blank] ADR Stipulation
  
3. a. Party served: Clearwire Communications LLC  
  
b. Person Served: Caroline Little - Corporation Service Company - Person authorized to accept service of process
4. Address where the party was served: 300 Deschutes Way SW Suite 304  
Tumwater, WA 98501
5. I served the party
  - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) or (date): 9/14/2012 (2) at (time): 1:15 PM
6. The "Notice to the Person Served" (on the summons) was completed as follows:
  - c. on behalf of:

**BY FAX**

Clearwire Communications LLC

under: CCP 416.10 (corporation)

## 7. Person who served papers

- a. Name: C. Heater
- b. Address: One Legal - 194-Marin  
504 Redwood Blvd #223  
Novato, CA 94947
- c. Telephone number: 415-491-0606
- d. The fee for service was: \$ 159.95
- e. I am:
  - (1) Not a registered California process server.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 9/17/2012

C. Heater  
IN NAME OF PERSON WHO SERVED PAPERS*C. Heater*  
SIGNATURE

Code of Civil Procedure § 417.12